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June 9, 2011

VIA ELECTRONIC SUBMISSION

Mr. David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, N.W.
Washington, DC 20581

**Re: Swap Data Recordkeeping and Reporting Requirements:
Pre-Enactment and Transition Swaps (RIN 3038-AD48)**

Dear Mr. Stawick:

On behalf of the Federal Home Loan Banks (the "FHLBanks"), we appreciate this opportunity to comment on the above-referenced proposed rules (the "Proposed Rules"), which address recordkeeping and reporting requirements for swaps ("Historical Swaps") in effect on July 21, 2010 and swaps entered into between July 21, 2010 and the effective date of the final recordkeeping and reporting rules (the "General Recordkeeping Reporting Proposed Rules")¹ promulgated by the Commodity Futures Trading Commission (the "CFTC") under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). The FHLBanks agree that it is imperative for the CFTC and other regulators to obtain data and other information about the over-the-counter derivatives market and acknowledge that the Dodd-Frank Act requires the regulators to obtain such information. However, the FHLBanks have concerns about the unnecessary financial and operational burdens that the Proposed Rules could potentially have on end-user counterparties² to swaps. Specifically, the FHLBanks believe that as between a swap dealer and an end-user, the swap dealer is always in the better position to comply with the reporting requirements contained in the Proposed Rules and any other regulatory reporting requirements (including without limitation the reporting requirements under the General Recordkeeping and Reporting Proposed Rules).

¹ See Swap Data Recordkeeping and Reporting Requirements at 75 Fed. Reg. 76574 (December 8, 2010).

² As used herein, the term "end-user counterparties" means swap counterparties that are not swap dealers or major swap participants.

I. The FHLBanks

The 12 FHLBanks are government-sponsored enterprises of the United States, organized under the authority of the Federal Home Loan Bank Act of 1932, as amended, and structured as cooperatives. Each is independently chartered and managed, but the FHLBanks issue consolidated debt obligations for which each is jointly and severally liable. The FHLBanks serve the general public interest by providing liquidity to approximately 8,000 member institutions, thereby increasing the availability of credit for residential mortgages, community investments, and other services for housing and community development. Specifically, the FHLBanks provide readily available, low-cost sources of funds to their member institutions.

The FHLBanks enter into swap transactions as end-users with swap dealers to facilitate their business objectives and to mitigate financial risk, primarily interest rate risk. As of March 31, 2011, the aggregate notional amount of over-the-counter interest rate swaps held by the FHLBanks collectively was \$759.6 billion. At present, all of these swap transactions are entered into bilaterally and none of them are cleared. Certain of the FHLBanks also provide their member institutions, particularly smaller, community-based institutions, with access to the swap market by intermediating swap transactions between the member institutions and the large swap dealers, thus allowing such members to hedge interest rate risk associated with their respective businesses.

II. The Proposed Rules

General. The Proposed Rules impose recordkeeping obligations on all counterparties to Historical Swaps and impose limited reporting obligations on certain of these counterparties. Consistent with the General Recordkeeping and Reporting Proposed Rules, the Proposed Rules establish a hierarchy for determining which counterparty to a Historical Swap will be required to report such swap (the "Reporting Counterparty"). Specifically, if one of the counterparties to a swap is a swap dealer, then the swap dealer is the Reporting Counterparty and if neither counterparty is a swap dealer but one of the counterparties is a major swap participant, then the major swap participant is the Reporting Counterparty. In addition, if both counterparties to a swap are swap dealers, major swap participants or end-users, then the counterparties themselves designate who will be the Reporting Counterparty.

Swaps with Non-U.S. Persons. Notwithstanding the hierarchy described above, if one of the counterparties to a swap is not a U.S. person and the other counterparty is a U.S. person, then the Proposed Rules and the General Recordkeeping and Reporting Proposed Rules designate the counterparty that is a U.S. person as the Reporting Counterparty for all swaps between such counterparties. This designation would be the case regardless of the "status" (e.g., swap dealer, major swap participant or end-user) of the counterparties. Thus, for instance, if an FHLBank entered into a swap as an end-user with a swap dealer that is not a U.S. person, then the FHLBank would be the Reporting Counterparty. The FHLBanks believe that the foregoing scenario is problematic because swap dealers will always be in a better position to satisfy reporting obligations than their

end-user counterparties. Accordingly, designating an end-user as the Reporting Counterparty for a swap between such end-user and a swap dealer (or major swap participant) is inconsistent with the CFTC's articulated objectives of imposing reporting obligations on the counterparty that has the "easiest, fastest and cheapest access to the set of data in question."³

Under §2(i) of the Commodity Exchange Act (the "CEA"), as amended by §722 of the Dodd-Frank Act, the provisions of the Dodd-Frank Act apply to activities outside the United States if such activities have a direct and significant connection with activities in, or effect on, commerce in the United States. Accordingly, the FHLBanks presume that a number of foreign swap dealers who regularly enter into swap transactions with counterparties in the United States will have to register with the CFTC and will be subject to full regulation as swap dealers. The FHLBanks do not believe that the CFTC should apply its reporting rules to these swap dealers any differently than it applies the other requirements applicable to all swap dealers under the Dodd-Frank Act and the CFTC's rules promulgated in connection therewith. **If the CFTC has regulatory jurisdiction over a swap dealer, such swap dealer should be the Reporting Counterparty under the Proposed Rules and the General Recordkeeping and Reporting Proposed Rules, regardless of whether such swap dealer is a U.S. person.**

Each of the FHLBanks has outstanding swaps with multiple foreign swap dealers that may be "non-U.S. persons"⁴ under the Proposed Rules and the General Recordkeeping and Reporting Proposed Rules. These swap dealers regularly offer swaps to counterparties organized, and engaging in business, in the United States. In addition, almost all of these swap dealers have offices or branches located in the United States. Accordingly, the FHLBanks presume that the CFTC's regulatory jurisdiction under §2(i) of the CEA would extend to such swap dealers. Additionally, the FHLBanks believe that because these swap dealers (like all swap dealers) regularly accommodate swap transactions with a multitude of different counterparties as one of their primary business activities, these swap dealers, and not their end-user counterparties, are the counterparty with the "easiest, fastest and cheapest access" to the data required to be reported under the Proposed Rules and the General Recordkeeping and Reporting Proposed Rules. Requiring end-users such as the FHLBanks (that enter into swap transactions on an as-

³ See Swap Data Recordkeeping and Reporting Requirements at 75 Fed. Reg. 76574, 76581 (December 8, 2010).

⁴ The FHLBanks note that neither the Proposed Rules nor the General Recordkeeping and Reporting Proposed Rules define "U.S. person." Additionally, while certain of the CFTC's rules define "non-U.S. person" for purposes not applicable to the Proposed Rules or the General Recordkeeping and Reporting Proposed Rules, the FHLBanks are not aware of a general definition of "U.S. person" in the CEA or the CFTC's existing rules. If the final versions of the Proposed Rules and the General Recordkeeping and Reporting Proposed Rules retain the term "U.S. person," such term should be clearly defined to avoid confusion regarding which counterparty to a swap is the Reporting Counterparty. Furthermore, consistent with this comment letter, the FHLBanks believe that as used in the final versions of the Proposed Rules and the General Recordkeeping and Reporting Proposed Rules, "U.S. person" should mean a person over which the CFTC has regulatory jurisdiction.

Mr. David A. Stawick

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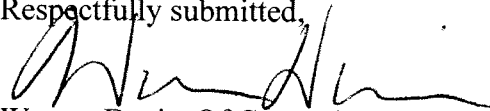
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needed basis for hedging purposes incidental to their other business activities) to implement the infrastructure necessary to report all of the swaps that they enter into with foreign swap dealers would be inefficient from both a financial and operational standpoint.

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The FHLBanks appreciate the opportunity to comment. Please contact Warren Davis at (202) 383-0133 or warren.davis@sutherland.com with any questions you may have.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Warren Davis', is written over the typed name.

Warren Davis, Of Counsel
Sutherland Asbill & Brennan LLP

cc: FHLBank Presidents
FHLBank General Counsel